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Telling All: Full-Disclosure Push By SEC on Firms Alarms Critics

The SEC believes the slush-fund cases are significant to investors primarily because "they raise questions of the quality of management, the quality of earnings and the integrity of financial accounts and reporting," according to Chairman Ray Garrett Jr. In addition, SEC officials believe stockholders have a right to know if the continuation of a company's operations in a foreign country depends on making payoffs to officials there and what the risks of stopping the payoffs might be.

But because disclosure of such payments can upset a company's dealings abroad, the SEC is debating how much sunlight to let in. The agency is very aware that "a lot of these companies are in a very difficult squeeze because if they disclose some of this, they may jeopardize economic interests abroad," Commissioner Sommer says.

Thus, the agency is faced with the problem that its efforts to force disclosure of foreign payments in order to protect investors could have the opposite effect. "Stockholders aren't going to praise us if the disclosure we require leads to the nationalization of \$100 million in assets in some foreign country," an SEC enforcement official remarks. "We don't want to protect shareholders so well that there's nothing left to protect."

How Much Detail?

(One New York securities lawyer adds that if faced with the proposition that a payment to a foreign official will protect or promote a company's business abroad, "you know that most stockholders would say if it's going to help your earnings per share and my stock price, do it.")

Phillips Petroleum, Gulf and Northrop have, as part of consent settlements of SEC charges, agreed to file full reports on their slush funds with the SEC. But the agency hasn't decided how detailed these reports will have to be. It's not yet clear, for instance, whether they must name the officials who received the money, state the reasons for the payoffs and indicate if the companies got what they were promised. The first report dealing with foreign payoffs, from Phillips, isn't due until later this month, and when the reports do come in the companies may seek confidential SEC treatment of some of the information.

Even if the commission doesn't grant an application for secrecy, it could be months before the information comes out. Northrop requested confidential treatment of part of a report it filed in December under a court order in another case, and the SEC just recently scheduled a June hearing on that request.

One reason for the six-month delay is that the SEC hasn't yet decided how it's going to handle foreign-payoff cases in the long run. So far it has acted on them one by one without taking an overall view of all the problems they raise. "I think we have got to determine policies on these matters rather than make it a hit-or-miss issue," Mr. Sommer says.

"So many people are involved and so much money is involved, because of the growth of international trade in recent years, that I don't think governments have caught up with this problem yet," says former Secretary of State William Rogers. He suggests that foreign governments should act to clear up confusion about how business is done in their countries, with particular attention to transactions calling for fat commissions or agent's fees, some of which may end up in the pockets of government officials. Mr. Rogers proposes a legal requirement that all commissions be disclosed in each sales contract.

Way of Life

Uncertainty over what constitutes an acceptable commission abroad is troublesome to the U.S. businessman, Mr. Rogers adds. "The difficulty is, he is often advised that in some countries this is a way of life and if he wants to do business in that country, he must go along" and meet demands for unusually high commissions.

For the time being, at least, disclosures of foreign disbursements and the resulting complications are likely to spread. The SEC is about to bring several more cases involving foreign payoffs, including one against Ashland Oil Inc., and the SEC's enforcement division is asking a number of companies, including banana producers and defense contractors, for information on their dealings with commission agents and governments abroad. "If we have reason to believe that firms in an industry are doing things they shouldn't, then we can have an investigation of a whole industry," says Commissioner John R. Evans.

In addition, some SEC officials suggest that the Global Marine case, which involves the CIA's efforts to salvage a sunken Russian submarine, may spark a quiet commission search for other corporate failures to disclose potentially controversial dealings with the CIA. "We would like to know from the agency how many other public companies are doing the same type of thing," an SEC official says.

The efforts to force disclosure of foreign payments come on top of SEC moves to expand corporate disclosure in other, more traditional areas. The agency is currently studying comments on proposals designed to bolster the information in quarterly financial reports that firms file with the agency and to increase the accuracy of corporations' profit forecasts. The commission is also considering whether it should require companies to disclose information on such non-financial matters as hiring practices and environmental standards.

The commission insistence on full disclosure will probably trouble banks in particular. SEC officials maintain that investors have a right to know how the recession is affecting a bank's loan portfolio, particularly at a time when some analysts believe that banks are overextended.

Exaggerated Dangers Seen

Some banks have balked at SEC demands. Several months ago Chemical New York Corp., parent of Chemical Bank, canceled a \$100 million debenture offering after the SEC insisted that the bank holding company give detailed information on loans on which borrowers, particularly real estate investment trusts, have fallen behind in payments of interest or principal. Proposed offerings by other banks have been delayed for similar reasons.

Officials at the Federal Reserve Board and the Office of the Comptroller of the Currency argue that the SEC disclosure demands exaggerated the dangers that banks face. These officials fear disclosures might cause some nervous depositors to withdraw their funds and might make it harder for banks to raise needed capital.

Bank regulators and SEC officials are trying to work out a disclosure plan that would balance protection of banks and their depositors with protection of investors. But the SEC is reluctant to adopt a milder disclosure standard for banks than for other businesses. "I have difficulty with the conclusion that because banks are important they should be treated differently from other companies," Mr. Loomis says.

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